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Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

CELA  
SENSITIVE

MUR: 6363

DATE COMPLAINT FILED: September 1, 2010

DATE OF NOTIFICATION: September 3, 2010

DATE ACTIVATED: October 22, 2010

EXPIRATION OF SOL: June 20, 2014-June 27, 2015

MUR: 6440

DATE COMPLAINT FILED: December 7, 2010

DATE OF NOTIFICATION: December 13, 2010

DATE ACTIVATED: February 8, 2011

EXPIRATION OF SOL: June 20, 2014-Sept. 10, 2015

COMPLAINANTS:

Christopher Wolfe

Michael D. Brunelle/New Hampshire Democratic Party

RESPONDENTS:

Friends of Frank Guinta and Louis DeMato,  
in his official capacity as Treasurer

Frank Guinta

RELEVANT STATUTES:

2 U.S.C. § 434(b)

2 U.S.C. § 441a(a)(1)(A)

2 U.S.C. § 441a(f)

2 U.S.C. § 441f

11 C.F.R. § 100.33

11 C.F.R. § 110.4(b)(1)

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

These matters were generated by two virtually identical complaints alleging that Frank Guinta, 2010 candidate for New Hampshire's 1<sup>st</sup> Congressional District, and his campaign committee, Friends of Frank Guinta and Louis DeMato, in his official capacity as Treasurer

1 ("the Committee"), received excessive contributions in the name of another and misreported  
2 them as personal loans or contributions from the candidate in violation of the Federal Election  
3 Campaign Act of 1971, as amended (the "Act"). Specifically, the complaints allege that  
4 Guinta did not have up to \$355,000 in personal funds that he reportedly loaned or contributed  
5 to his campaign, and that, therefore, Guinta must have obtained the funds from some other  
6 source. The complaints' assessment of Guinta's financial means was based on a review of  
7 financial statements Guinta filed with the United States House Ethics Committee.

8 In response to the initial complaint, the Respondents indicated that Guinta voluntarily  
9 amended his House ethics statement (disclosing a previously unreported bank account  
10 containing \$250,000 - \$500,000) to ensure that he properly disclosed assets, and asserted that  
11 "personal loans to the campaign were properly disclosed." Guinta Response dated  
12 September 17, 2010. In response to the subsequent complaint, the Respondents assert, *inter*  
13 *alia*, that there has been no violation of the Act and that the funds in the belatedly disclosed  
14 bank account "were and are the personal funds of the candidate." Response dated  
15 January 20, 2011.

16 As discussed in more detail below, available information suggests that Guinta may  
17 have used funds obtained from another source to make the loans and contributions at issue.  
18 Therefore, we recommend that the Commission find reason to believe that Friends of Frank  
19 Guinta and Louis DeMato, in his official capacity as Treasurer, violated 2 U.S.C. §§ 434(b)  
20 and 441a(f), and Frank Guinta violated 2 U.S.C. § 441f. We also recommend that the  
21 Commission authorize an investigation into whether the loans and contributions at issue were  
22 in fact made from Guinta's personal funds. While we would invite Respondents to

1 voluntarily provide additional information and bank records, we recommend that the  
2 Commission authorize the use of compulsory process in case formal discovery is necessary.

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12 **II. FACTUAL SUMMARY**

13 On April 30, 2009, Frank Guinta filed a Statement of Candidacy for the 2010  
14 Congressional race for the 1<sup>st</sup> District of New Hampshire. Guinta won the Republican  
15 primary election on September 14, 2010, won the general election on November 2, 2010, and  
16 is presently the U.S. Representative for New Hampshire's 1<sup>st</sup> Congressional District. See  
17 Office of the Secretary of State of New Hampshire website at [http://www.sos.nh.gov/](http://www.sos.nh.gov/electwinwin.html)  
18 [electwinwin.html](http://www.sos.nh.gov/electwinwin.html). As detailed in the chart below, the Committee's disclosure reports indicate  
19 that during the course of the primary election campaign Guinta loaned the Committee a total  
20 of \$245,000 in "personal funds" and contributed an additional \$110,000:

**Frank Guinta Reported Loans and Contributions**

DATE	AMOUNT OF FUNDS	REPORTED TRANSACTION
06/20/2009	\$ 20,000	loan
03/28/2010	\$100,000	loan
06/27/2010	\$125,000	loan
09/03/2010	\$ 60,000	contribution
09/10/2010	\$ 50,000	contribution
	<b>TOTAL: \$355,000</b>	

On May 15, 2009, Guinta filed a financial statement required for House candidates by the Ethics in Government Act ("EIGA"), 2 U.S.C. § 101 *et seq.* The 2009 EIGA statement covered the period January 1 through December 31, 2008. According to the 2009 EIGA statement, in 2008 Guinta had a salary of \$72,000, two bank accounts valued at \$1,001 - \$15,000 each, one bank account valued at \$15,001 - \$50,000, and various stocks and mutual funds. *See* 2009 EIGA statement. Guinta's 2010 EIGA statement, which covered the period January 1 - December 31, 2009, and was filed on May 15, 2010, reflected the same assets as his 2009 EIGA statement. *See* 2010 EIGA statement.

On July 23, 2010, Guinta amended his 2010 EIGA statement disclosing a previously unreported bank account at the Bank of America containing \$250,001 - \$500,000. Guinta also disclosed rental income falling within the \$15,000 - \$50,000 range, and interest income in the range of \$1,200 - \$3,900. In addition, Guinta amended the period covered by the disclosure by adding the months of January through April 2010.

Complainants filed the complaints at issue here on September 1 and December 7, 2010, alleging that Guinta did not have sufficient personal funds to make the loans and contributions at issue, and that, therefore, he must have used funds from another source, in violation of the Act. News articles attached to the initial complaint report various

1 explanations from Guinta or his campaign committee concerning the source of the funds.  
2 Specifically, a news story reported that Guinta maintained that he earned the funds through  
3 years of work and frugal living. Fergus Cullen, *Union Leader: GOP Activist Questions*  
4 *Congress Candidate Guinta's Finances*, [http://www.unionleader.com/article.aspx?Headline=  
5 =GOP+activist+ questions +Congress +candidate+Guinta% 27s+finances&articleId=  
6 350fcc49 -620d-42d7-a270-9a66a18d1b51](http://www.unionleader.com/article.aspx?Headline=%3D(GOP+activist+questions+Congress+candidate+Guinta%27s+finances&articleId=350fcc49-620d-42d7-a270-9a66a18d1b51), Aug. 13, 2010 (Compl. Attach. 2). According to  
7 another article, Guinta's campaign director stated that "Frank Guinta amended his financial  
8 disclosure report last month, after questions were raised concerning the source of what was  
9 proven to be a legitimate personal loan ... from a series of accounts Guinta has had since  
10 March of 1996." Kasie Hunt, *Politico: Bradley: Guinta Should Drop Out*,  
11 <http://www.politico.com/news/stories/0810/41058.html>, Aug. 13, 2010 (Compl. Attach. 3).  
12 According to an additional news report, Guinta stated that over the past 14 years he has put  
13 money into several personal accounts which are the source of his campaign loans, and further  
14 explained that "It's multiple accounts at Bank of America, it's not just one. My first account I  
15 opened up back in 1996. Since then I've opened up multiple, additional accounts, and these  
16 are all at Bank of America. I opened up two additional accounts in 2001, another two in  
17 2002, and another in 2004." Drew Cline, *Guinta Explains Source of His Campaign Loans*,  
18 <http://blogs.unionleader.com/andrew-cline/index.php/archives/1786>, Aug. 18, 2010 (Compl.  
19 Attach. 6).

20 In response to the second complaint, Guinta and the Committee assert, *inter alia*, that  
21 there has been no violation of the Act and that the funds in the belatedly disclosed bank  
22 account "were and are the personal funds of the candidate." Response dated January 20,  
23 2011. In an attached affidavit, Guinta averred, "I possess legal access [to] the funds in the

1 Account based upon an equitable interest, and pursuant to a specific commitment and pledge  
2 to me from my parents that the funds in the Account were available to me for my use for  
3 whatever purpose(s) I deemed appropriate." Guinta Response dated January 20, 2001, Guinta  
4 Affidavit at ¶ 10. Guinta further averred that, "[a]fter considering various potential uses of  
5 the funds in the Account over a period of several years, I determined to utilize the funds for  
6 my congressional campaign." *Id.* at ¶ 11.

7 **III. LEGAL ANALYSIS**

8 The Act prohibits any person from making contributions "to any candidate and his  
9 authorized political committee with respect to any election for Federal office which, in the  
10 aggregate, exceed \$2,000." 2 U.S.C. § 441a(a)(1)(A). Indexed for inflation, this contribution  
11 limit was \$2,400 in the 2010 election cycle. The Act also prohibits any individual from  
12 making contributions "aggregating more than \$25,000 in any calendar year."  
13 2 U.S.C. § 441a(a)(3). These contribution limits also apply to a candidate's family members.<sup>1</sup>  
14 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of  
15 value made by any person for the purpose of influencing any election for Federal office.  
16 2 U.S.C. § 431(8)(A)(i). In addition, the Act prohibits any candidate or political committee  
17 from knowingly accepting any contribution or making any expenditure in violation of the  
18 provisions of section 441a. 2 U.S.C. § 441a(f). All contributions made by persons other than  
19 political committees must be reported in accordance with 2 U.S.C. § 434(b)(2)(A). Political

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<sup>1</sup> In *Buckley v. Valeo*, 424 U.S. 1, 51 n. 57 (1976) ("*Buckley*"), the Supreme Court stated that the legislative history of the Act provided, "It is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation . . . . The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than \$1,000 for each election involved. S. Rep. No. 93-1237, p. 58 (1974), U.S. Code Cong. & Admin. News 1974, p. 5627." The Court further stated, "Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors." *Id.* at 53, n. 59.

1 committees must report the identification of each person who makes a contribution or  
2 contributions with an aggregate value in excess of \$200 during the reporting period, together  
3 with the date and amount. 2 U.S.C. § 434(b)(3). The Act also prohibits a person from  
4 making a contribution in the name of another person, knowingly permitting his name to be  
5 used to effect such a contribution, or knowingly accepting a contribution made by one person  
6 in the name of another. 2 U.S.C. § 441f.

7 At issue in this matter is whether the \$355,000 in funds that Guinta loaned and  
8 contributed to his campaign between June 2009 and September 2010 came from his personal  
9 funds. Commission regulations define "personal funds" as, *inter alia*, "[a]mounts derived  
10 from any asset that, under applicable State law, at the time the individual becomes a  
11 candidate, the candidate had legal right of access to or control over, and with respect to which  
12 the candidate had (1) legal and rightful title; or (2) an equitable interest." 11 C.F.R.  
13 § 100.33(a).

14 Guinta filed a Statement of Candidacy on April 30, 2009. Thus, Guinta's "personal  
15 assets" would include amounts from any asset that Guinta had legal right of access to or  
16 control over on or before April 30, 2009. Guinta's 2009 EIGA statement reflected that at the  
17 end of 2008, Guinta had a salary of \$72,000 and liquid assets of up to \$80,000 – substantially  
18 less than the \$355,000 he reportedly contributed to his campaign. Guinta has never amended  
19 his 2009 EIGA statement. Guinta's 2010 EIGA statement similarly reflected that at the end  
20 of 2009, he had a salary of \$72,000 and liquid assets of up to \$80,000. Guinta subsequently  
21 amended his 2010 EIGA statement, disclosing a previously unreported Bank of America  
22 account containing \$250,001 - \$500,000.

1 Nevertheless, based on the available information, there is reason to believe that Guinta  
2 did not have enough personal funds to finance his loans and contributions to his campaign.  
3 First, there are a number of discrepancies that require further clarification. Guinta's  
4 averments in response to the complaint—that he possessed “legal access [to] the funds in the  
5 Account based upon an equitable interest, and pursuant to a specific commitment and pledge  
6 to me from my parents that the funds in the Account were available to me for my use for  
7 whatever purpose(s) I deemed appropriate”—suggest that the funds at issue were in one  
8 account that was held in his parents' name. Guinta Response dated January 20, 2001, Guinta  
9 Affidavit at ¶ 10. This appears to be at odds with his earlier representations that (1) the funds  
10 were in multiple accounts, and (2) that he earned the money and saved it himself, in which  
11 case the funds would presumably be held in his own name.

12 Further, although he avers that he possessed legal access to the funds in the Account  
13 based upon an equitable interest, he does not precisely state the basis for that equitable  
14 interest, or when he obtained that interest, which would clarify whether the funds were  
15 personal funds under Commission regulations. *See* 11 C.F.R. § 100.33(a) (personal funds are,  
16 *inter alia*, those to which an individual, *at the time he or she became a candidate*, had legal  
17 right of access to or control over, and with respect to which the candidate had (1) legal and  
18 rightful title; or (2) an equitable interest). Guinta's statement that the funds at issue came  
19 from personal bank accounts that he opened between 1996 and 2004, *see* Drew Cline, *Guinta*  
20 *Explains Source of His Campaign Loans*, [http://blogs.unionleader.com/andrew-](http://blogs.unionleader.com/andrew-cline/index.php/archives/1786)  
21 [cline/index.php/archives/1786](http://blogs.unionleader.com/andrew-cline/index.php/archives/1786), Aug. 18, 2010 (Compl. Attach. 6 at 2), and his averment that  
22 he had considered “various potential uses of the funds in the Account over a period of several  
23 years,” *Id.* at ¶ 11 [emphasis added], appear to be inconsistent with his actions. Specifically,

1 Guinta did not disclose in his 2009 EIGA Statement that he possessed the funds at issue  
2 during 2008, prior to becoming a candidate in April 2009. *See* 2009 EIGA Statement. In  
3 addition, while Guinta amended his 2010 EIGA Statement, he has never amended the earlier  
4 2009 EIGA Statement to reflect that the funds at issue were among his personal assets in  
5 2008. This omission suggests that Guinta, if he held a legal and rightful title or an equitable  
6 interest at all, may have acquired that title or interest as late as 2010, when he was already a  
7 candidate.<sup>2</sup> If this is the case, the funds Guinta loaned and contributed to his campaign would  
8 not constitute "personal funds" under Commission regulations and would result in excessive  
9 contributions made in the name of another, that were inaccurately reported. Therefore, based  
10 on the foregoing, we recommend that the Commission find reason to believe Friends of Frank  
11 Guinta and Louis DeMato, in his official capacity as Treasurer, violated 2 U.S.C. §§ 434(b)  
12 and 441a(f), and that Frank Guinta violated 2 U.S.C. § 441f.<sup>3</sup>

13 **IV. INVESTIGATION**

14 We recommend that the Commission authorize an investigation,  
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17 If necessary,  
18 we plan to investigate whether the funds Guinta loaned and contributed to his campaign  
19 were his personal funds. Although we will attempt to conduct the investigation informally,  
20 formal discovery may be necessary. We therefore recommend authorizing the use of  
21 compulsory process, including interrogatories and subpoenas, as necessary.

<sup>2</sup> Further, it is not clear why Guinta added extra months to the period of coverage for the amended 2010 EIGA Statement (changing coverage from January 1, 2010 through December 31, 2010, to January 1, 2010 through April 30, 2010).

<sup>3</sup> We make no recommendation at this time with respect to Guinta's parents. If warranted, we shall make appropriate recommendations at a later time.

V. RECOMMENDATIONS

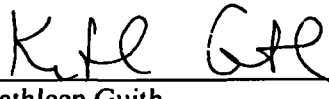
1. Merge MUR 6363 into MUR 6440;
2. Find reason to believe that the Friends of Frank Guinta and Louis DeMato, in his official capacity as Treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f);
3. Find reason to believe that Frank Guinta violated 2 U.S.C. § 441f;
4. Authorize the use of compulsory process, including interrogatories and subpoenas, as necessary;
5. Approve the Attached Factual and Legal Analysis; and
6. Approve the appropriate letters.

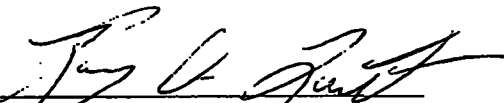
P. Christopher Hughey  
Acting General Counsel


Date

5-9-11

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